***THE HON'BLE MR JUSTICE B.PRAKASH RAO**

And

***THE HON'BLE MR JUSTICE D.APPA RAO**

+W.A.NO.1545 OF 2001

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%Dated 31.03.2006

#The S.K.R.B.R.College, Narasaraopet, Guntur District, rep.by its Secretary and Correspondent.

...APPELLANT

VERSUS

$1. D.Ch.Kataiah, S/o.Pitchaiah.
2. The Commissioner and Director of Collegiate Education, Nampally, Hyderabad.
3. The Government of Andhra Pradesh, rep.by its Secretary, Higher Education, Secretariat Building, Hyderabad.

...RESPONDENTS

! Counsel for Appellant: Mr.O.Manohar Reddy

^ Counsel for the Respondent No.1: P.V.S.S.Rama Rao

Counsel for the Respondent Nos.2 & 3: G.P.for Higher Education

< GIST:

>HEAD NOTE:

?Cases Referred.

1. 1991 (3) ALT 335

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NO.1545 of 2001

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31st March 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23.08.2001 in W.P.NO.22745 OF 2000 on the file of the High Court.)

Between:

The S.K.R.B.R.College, Narasaraopet, Guntur District, rep.by its Secretary and Correspondent.

...APPELLANT

AND

1. D.Ch.Kataiah, S/o.Pitchaiah.

And two others.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NO.1454 OF 2001

JUDGMENT: (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard Sri O.Manohar Reddy, the learned counsel appearing on behalf of the appellant and the learned Government Pleader for Higher Education and Sri P.V.S.S.Rama Rao, the learned counsel appearing on behalf of the first respondent.

This appeal is at the instance of the management/College, which seeks to assail the order dated 23.08.2001 allowing the Writ Petition being W.P.No.22745 of 2000 filed by the first respondent.

The facts, which are necessary for disposal of this appeal, are that the writ petitioner, who was initially appointed in the year 1990 on a consolidated pay, being enhanced subsequently, was asked suddenly not to attend the duties. Therefore, the Writ Petition being

W.P.No.22745 of 2000 was filed, *inter alia*, seeking to assail the action of the respondents in not allowing him to work as a lecturer and seeking further direction to admit him to grant in aid on the same lines as that of the similar employee through G.O.Rt.No.573, Higher Education (CE.II.2) Department, dated 23.08.2000. Contesting the same, the appellant herein raised several objections having regard to the fact that the writ petitioner has no right to seek any such regularization nor there is any violation of law since the appointment itself is purely temporary one and on part time basis. Considering the facts and various submissions made and especially with regard to the permission as contemplated under Section 79 of the A.P.Education Act ('the Act' for brevity), the learned Single Judge allowed the Writ Petition.

Admittedly, in this case, no permission was obtained for dispensing with the services of the appellant/writ petitioner. Sri O.Manohar Reddy, the learned counsel for the appellant sought to raise a plea that the decision which has been relied on in ***Vasavi College of Engineering v. A.Suryanarayana***[1], has absolutely no application having regard to the fact that the petitioner was appointed

on temporarily part time basis and therefore, the very provision will not have any application and it can apply to those who are appointed on regular basis, approved by the competent authorities.

Having heard the counsel on either side and on perusal of the material available on record, the only question that arises for consideration is as to whether on the facts and circumstances, the action of the appellant in dispensing with the services of the first respondent is violative of Sections 79 and 83 of the Act.

Before going into merits, considering the principles held by this Court in ***Vasavi College of Engineering v. A.Suryanarayana*** (1 supra), which can be illustrated as under.

> Sections 79 and 83 supplement each other, and between them exhaust all terminations of service penal or otherwise and those provisions apply equally to regular as also temporary, non-regular employees. In either case where the termination penal or non-penal, it is obligatory to obtain prior approval of competent or higher authority, as a condition precedent for any such action which the employer may take against the teaching or non-teaching employees of institutions covered by the Act.

On a reading of Section 79 *visa-a-vis* Section 83 of the Act, no distinction has been drawn between an employee and another, be it permanent or temporary or part time basis. Irrespective of nature of appointment, he remains same for all purposes under the provisions of the Act. The expression 'employee' is not specifically defined under

the said Act. In the absence of any such statutory restriction specially made, no distinction can be drawn between one category and the other. By doing so, it amounts to an addition not provided for. It is a provision enacted to protect all such employees and barring against any action on the part of the management in removing the employees at their choice. When the hire and fire system has been deprecated long time back by the Apex Court, the said provision cannot be restricted only to regular employees. The ratio laid down in the aforesaid decision can squarely have application to the facts of the case. Therefore, we hold that it is an obligation even to save the employees appointed temporarily. Hence, we do not find any merits in the appeal.

The appeal is accordingly dismissed. No costs.

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(B.PRAKASH RAO, J)

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(D.APPA RAO, J)

31st March 2006

Note: LR Copy be marked
B/O
RRB

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[1] 1991 (3) ALT 335